

Remarks

Applicant notes that the Office Action states that only Claims 1-33 are pending and that Claims 4-33 are objected to as being in improper multiple dependent form. Accordingly, Claims 4-33 have not been further treated on the merits. As discussed with the Examiner in a phone conference, when the captioned application was filed a substitute specification including new Claims 1-44 was submitted. Claims 1-44 removed all of the improper multiple dependency. Accordingly, it is respectfully submitted that Claims 1-44 are pending in the application and that all those claims are in proper form pursuant to 37 C.F.R. 1.75(c).

Turning to the art rejections, Claims 1-3 stand rejected as unpatentable over *Gabriel, et al*, U.S. Patent No. 5,922,663 ('663 Patent) or *Gabriel, et al*, U.S. Patent No. 6,358,914 ('914 Patent). The rejection is respectfully traversed.

It is true, as stated by the Examiner, that the *Gabriel* Patent discloses a detergent composition containing a conventional surfactant, a gemini surfactant and a polymeric release soil release agent. It is further true, that among suitable conventional surfactants are amphoteric surfactants such as alkyl betaines, amidopropyl betaine, etc. However, it is respectfully submitted that the disclosures of the *Gabriel* Patents, absent applicant's disclosure, would not lead to the claimed surfactant compositions, and more specifically, surfactant compositions that are tailored for skin and hair use. The surfactant compositions of the *Gabriel* Patents are designed to allow better deposition of polymeric soil release agents conventionally used with surfactant systems. In column 1 of the '663 Patent is it noted that the invention is particularly directed to the use of compositions containing low concentrations of gemini surfactants to allow the improved deposition of polymeric soil release agents in the presence of typical detergent ingredients, especially *highly anionic surfactant systems*. Those opening lines of the '663 Patent teach away from applicant's invention. The compositions of the *Gabriel* Patent, as noted, are designed for a specific purpose, *to-wit*: to produce surfactant composition that allow better deposition of polymeric soil release agents with surfactant systems. There is no teaching or even any suggestion to use any combination of the ingredients listed in the *Gabriel* Patents to form a surfactant composition for use with the skin and hair and, indeed, there can be little doubt that that surfactant compositions used in textile laundry and hard surface cleaning would hardly be desirable for use on the human body, namely on the skin and hair.

As noted, it is true that the *Gabriel* Patent do disclose the use of amphoteric surfactants such as betaines, but those isolated disclosures can hardly be considered a teaching or even a suggestion

of applicant's compositions, which are designed for use on the skin and hair and that contain a gemini surfactant and in at least one additional detergent composition with poor initial foaming characteristics. It should be noted in this regard, that Claim 1 has been amended to recite a specific Markush group of compounds that are considered as having poor initial foaming characteristics and that group does not include betaines. As to the remaining compounds listed in the Markush group of detergent components having poor initial foaming characteristics, none of those compounds are disclosed in the *Gabriel* Patent.

While no pun is intended, the *Gabriel* Patents form a laundry list of virtually every surfactant known to man. Insofar as their disclosure of surfactants, the *Gabriel* Patents form an encyclopedia since they cover every class of known surfactants and in each of those classes there are a myriad of compounds.

There is simply no way that the skilled artisan having the *Gabriel* Patents before him or her would arrive at applicant's invention. Given that the *Gabriel* Patents are directed towards a soil release surfactant composition, there is no incentive for the skilled worker to select a gemini surfactant and one of applicant's specifically listed poor foaming detergent components to arrive at a surfactant composition specifically directed for use in the cleansing of hair and/or skin. All the more is this true since the *Gabriel* Patents specifically require the presence of a soil release agent and such agents have absolutely no function in cleansers for skin and hair. Further, save for betaines, the *Gabriel* Patents do not list applicant's specific poor initial foaming detergents.

The *Gabriel* Patents simply do not make out a *prime facie* case of obviousness since the only possible way at arriving at applicant's claims is to use applicant's specification as a recipe to select from the thousands of compounds listed in the *Gabriel* Patent.

The Examiner's position that in view of the *Gabriel* Patents, the skilled artisan would select a gemini surfactant and a detergent component with poor initial foaming characteristics to formulate a surfactant composition suitable for use with skin and hair is, with all due respect, pure speculation. There is absolutely no suggestion in either of the *Gabriel* Patents of any type of surfactant composition other than one for use in cleaning hard surfaces and in which there is present a soil release agent. Again, the two *Gabriel* Patents are nothing more, *vis-a-vis* applicant's invention, than encyclopedias or chemical compendiums of virtually every surfactant compound known. The law is clear that to make out a *prime facie* case of obviousness there must be some motivation for the skilled worker to make the claimed combination and, in this case, to arrive at applicant's composition. How, for example, would the skilled worker, viewing the *Gabriel* Patents,

conclude that one could formulate a skin and hair surfactant by selecting a gemini surfactant and a specific detergent component with poor initial foaming characteristics? In this regard, there is a virtually endless number of combinations of surfactants and specific surfactant compounds to choose from with no teaching, suggestion, or motivation of which of those endless combinations is to be selected to arrive at applicant's claimed composition. Perhaps, more to the point, since applicant has specifically delineated specific surfactants forming the detergent component with poor initial foaming characteristics, it simply flies in the face of reason to believe that the *Gabriel* Patents provide any basis to sustain an obviousness rejection.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims under consideration are in condition for allowance which is hereby earnestly solicited and respectfully requested.

Respectfully submitted,



C. James Bushman
Reg. No. 24,810

Date: July 8, 2003

BROWNING BUSHMAN P.C.
5718 Westheimer, Suite 1800
Houston, TX 77057-5771
Tel.: (713) 266-5593
Fax: (713) 266-5169

CERTIFICATE OF MAILING

I, Sheri Cooper, hereby certify that this correspondence and all referenced enclosures are being deposited by me with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 8, 2003.

By: 